IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 458 OF 2003

IN

SUMMARY SUIT NO. 2157 Of 2002

Mustan T. Kagalwala .. Plaintiff

versus

Electrex(I) Ltd. & Ors. .. Defendants

...

Mr.P.B. Kapadia for the plaintiff.
Mr.S. Nagyadavia i/b Rutuja Ambekar for the defendant nos.2 and 3.

CORAM : D.G. KARNIK,J.

DATED : 2nd March 2005.

P.C.:

1. Heard the learned counsel for the parties.

2. This Summons for Judgement is taken out against defendant nos.2 to 4 only. For a valuable consideration, the defendant no.1 drew a bill of exchange on defendant no.2 on 13th January 1999. The defendant no.2 is a partnership firm and defendant nos.2 and 3 are its partners. In the plaint, it is stated that the bill of exchange was accepted by partner of defendant no.2 but it failed and neglected to make the payment on presentation.

3. By filing an affidavit in reply dated 13th August 2004, Mr.Anand Hegde defendant no.3 who is the partner of defendant no.2 has denied that the firm ever accepted the bill of exchange. In paragraph no.11 of the affidavit in reply, he has stated on oath that the signature appearing on the alleged bill of exchange is not of any of the partners of defendant no.2 firm. In the plaint, there is no specific mention as to which of the partners of defendant no.2 had signed the acceptance of the bill of exchange. In such circumstances, the plaintiff would be required to prove by adducing evidence that the bill of exchange was accepted by defendant no.2 or any of its partners. In view of the denial on oath of the signature on the bill of exchange it cannot be said that the defence raised by the defendant is without any substance.

3. For these reasons, the defendant nos.2 to 4 are granted unconditional leave to defend the suit.

4. The suit shall stand transferred to the list of commercial causes. The defendant nos.2 to 4 shall file written statement within a period of one month.

D.G. KARNIK, J